

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D.C. 20426

OFFICE OF ENERGY MARKET REGULATION

In Reply Refer To:  
2014 ESA Project Company, LLC  
Docket No. ER15-1496-001

July 23, 2015

Mr. Hugh E. Hilliard  
Counsel for 2014 ESA Project Company, LLC  
O'Melveny & Myers LLP  
1625 Eye Street, N.W.  
Washington, D.C. 20006

Reference: Market-Based Rate Authorization

Dear Mr. Hilliard:

On April 13, 2015, as amended on June 4, 2015, you filed on behalf of 2014 ESA Project Company, LLC (ESA Project) an application for market-based rate authority with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity, and ancillary services at market-based rates.<sup>1</sup> ESA Project requests waivers commonly granted to similar market-based rate applicants.

Your filings were noticed on April 13, 2015, and June 5, 2015, with comments, protests or interventions due on or before May 4, 2015, and June 18, 2015. None was filed.

Pursuant to the authority delegated to the Director, Division of Electric Power Regulation - West, under 18 C.F.R. § 375.307, your submittals filed in the referenced docket are accepted for filing, effective April 14, 2015, as requested.<sup>2</sup> Based on your

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<sup>1</sup> ESA Project requests authorization to sell ancillary services in the markets administered by PJM Interconnection, L.L.C. (PJM), New York Independent System Operator, Inc. (NYISO), ISO New England Inc. (ISO-NE), California Independent System Operator Corp. (CAISO), Midcontinent Independent System Operator, Inc., and Southwest Power Pool, Inc. ESA Project also requests authorization to engage in the sale of certain ancillary services as a third-party provider in other markets.

<sup>2</sup> We note that ESA Project is not being granted authority to make third-party sales of operating reserves to a public utility that is purchasing ancillary services to satisfy its

representations, ESA Project meets the criteria for a Category 2 seller in the Northeast region and a Category 1 seller in the Southeast, Central, Southwest Power Pool, Southwest, and Northwest regions and is so designated.<sup>3</sup>

You state that ESA Project owns and operates small distributed generation facilities that, upon full deployment, will have generating capacities of approximately 13 megawatts (MW) in California, 1 MW in Connecticut, 3 MW in New Jersey, and 4 MW in New York. You explain that all of the output of these facilities is, or will be, fully committed to customers under long-term contracts. You add that ESA Project is wholly owned by 2014 ESA Holdco, LLC, and is affiliated with several entities that own generation facilities in the PJM, NYISO, ISO-NE, and CAISO markets. You state that certain affiliates of ESA Project, namely Commonwealth Edison Company, PECO Energy Company, and Baltimore Gas and Electric Company, have turned over control of their transmission facilities to PJM and therefore have mitigated any transmission market power.<sup>4</sup> Further, you affirmatively state that ESA Project and its affiliates have not erected barriers to entry and will not erect barriers to entry in the relevant markets.

You represent that ESA Project meets the criteria for Category 1 seller status in the Southeast, Central, Southwest Power Pool, Southwest, and Northwest regions because it and its affiliates own or control less than 500 MW of generation in aggregate in each region; it does not own, operate, or control transmission facilities other than the limited equipment necessary to connect its individual generating facilities to the transmission grid; it is not affiliated with anyone that owns, operates, or controls transmission facilities

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own open access transmission tariff requirements to offer ancillary services to its own customers. If ESA Project seeks such authority, it must make the required showing and receive Commission authorization prior to making such sales. *See Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies*, Order No. 784, FERC Stats. & Regs. ¶ 31,349, at PP 200-202 (2013), *order on clarification*, Order No. 784-A, 146 FERC ¶ 61,114 (2014).

<sup>3</sup> *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 848-50, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012). ESA Project must file an updated market power analysis for each region in which it is designated as a Category 2 seller in compliance with the regional reporting schedule adopted in Order No. 697.

<sup>4</sup> *Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,257 (1997).

or a franchised public utility in the same region as ESA Project's generation assets; and it does not raise other vertical market power issues.

### **Market-Based Rate Authorization**

The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.<sup>5</sup>

You state that ESA Project relies on Fourmile Wind Energy, LLC's recently accepted market power analysis<sup>6</sup> to demonstrate that ESA Project passes both the pivotal supplier and the wholesale market share screens for the PJM market. You also state that ESA Project relies on AV Solar Ranch 1, LLC's recently accepted market power analysis<sup>7</sup> to demonstrate that ESA Project passes both the pivotal supplier and the wholesale market share screens for the NYISO and ISO-NE markets and the 5004/5005, AP South, and Connecticut submarkets. Finally, you state that ESA Project relies on RE Columbia Two LLC's recently accepted market power analysis<sup>8</sup> to demonstrate that ESA Project passes both the pivotal supplier and the wholesale market share screens for the CAISO market. Accordingly, ESA Project's submittals satisfy the Commission's requirements for market-based rate authority regarding horizontal market power.

Based on your representations, ESA Project's submittals also satisfy the Commission's requirements for market-based rates regarding vertical market power.

ESA Project's request for waiver of Subparts B and C of Part 35 of the Commission's regulations requiring the filing of cost-of-service information, except for sections 35.12(a), 35.13(b), 35.15 and 35.16 is granted. ESA Project's request for waiver of Part 41 and Part 141 of the Commission's regulations concerning accounting and reporting requirements is granted with the exception of 18 C.F.R. §§ 141.14 and 141.15.<sup>9</sup> ESA Project's request for waiver of Part 101 of the Commission's regulations is hereby granted, with the exception that waiver of the provisions of Part 101 that apply to

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<sup>5</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

<sup>6</sup> *Fourmile Wind Energy, LLC*, 148 FERC ¶ 61,104 (2014).

<sup>7</sup> *AV Solar Ranch 1, LLC*, 148 FERC ¶ 61,102 (2014).

<sup>8</sup> *RE Columbia Two LLC*, 149 FERC ¶ 61,150 (2014).

<sup>9</sup> *Citizens Energy Corp.*, 35 FERC ¶ 61,198 (1986); *Citizens Power and Light Corp.*, 48 FERC ¶ 61,210 (1989) (*Citizens Power*); *Enron Power Marketing, Inc.*, 65 FERC ¶ 61,305 (1993), *order on reh'g*, 66 FERC ¶ 61,244 (1994) (*Enron*).

hydropower licensees is not granted with respect to licensed hydropower projects.<sup>10</sup> Notwithstanding the waiver of the accounting and reporting requirements here, ESA Project is expected to keep its accounting records in accordance with generally accepted accounting principles.

ESA Project requests blanket authorization under Part 34 of the Commission's regulations for all future issuances of securities and assumptions of liability. A separate notice was published in the Federal Register establishing a period during which protests could be filed. None was filed. ESA Project is authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of ESA Project, compatible with the public interest, and reasonably necessary or appropriate for such purposes.<sup>11</sup>

ESA Project must file an Electric Quarterly Report (EQR) with the Commission, consistent with Orders Nos. 2001<sup>12</sup> and 768.<sup>13</sup> ESA Project must file EQRs electronically with the Commission consistent with the procedures set forth in Order No.

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<sup>10</sup> Hydropower licensees are required to comply with the requirements of the Uniform System of Accounts pursuant to 18 CFR Part 101 to the extent necessary to carry out their responsibilities under Part I of the Federal Power Act (FPA). We further note that a licensee's status as a market-based rate seller under Part II of the FPA does not exempt it from its accounting responsibilities as a licensee under Part I of the FPA. *See Seneca Gen., LLC*, 145 FERC ¶ 61,096, at P 23, n.20 (2013) (citing *Trafalgar Power, Inc.*, 87 FERC ¶ 61,207, at 61,798 (1999) (noting that "all licensees are required to comply with the requirements of the Uniform System of Accounts to the extent necessary to carry out their responsibilities under [s]ections 4(b), 10(d) and 14 of the FPA")).

<sup>11</sup> *Citizens Power*, 48 FERC ¶ 61,210; *Enron*, 65 FERC ¶ 61,305.

<sup>12</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh'g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, FERC Stats. & Regs. ¶ 31,282 (2008).

<sup>13</sup> *Elec. Mkt. Transparency Provisions of Section 220 of the Fed. Power Act*, Order No. 768, FERC Stats. & Regs. ¶ 31,336 (2012), *order on reh'g*, Order No. 768-A, 143 FERC ¶ 61,054 (2013).

770.<sup>14</sup> ESA Project further must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority in accordance with Order No. 697.<sup>15</sup>

This action does not constitute approval of any service, rate, charge, classification, or any rule, regulation, or practice affecting such rate or service provided for in the filed documents; nor shall such action be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against any of the applicant(s).

This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R § 385.713.

Questions regarding the above order should be directed to:

Federal Energy Regulatory Commission  
Attn: Melissa Lozano  
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Office of Energy Market Regulation  
888 First Street, N.E.  
Washington, D.C. 20426

Sincerely,

Steve P. Rodgers, Director  
Division of Electric Power  
Regulation - West

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<sup>14</sup> See *Revisions to Electric Quarterly Report Filing Process*, Order No. 770, FERC Stats. & Regs. ¶ 31,338, at P 3 (2012) (citing Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 31).

<sup>15</sup> Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 1015-1046; 18 C.F.R. § 35.42 (2013). See also *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).